

1 HONORABLE RICARDO S. MARTINEZ
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA, et al.,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON, et al.,

14 Defendants.

Civil No. C70-9213

Sub-Proceeding No. 01-01
(Culverts)

PLAINTIFF-INTERVENOR
TRIBES' ANSWERS AND
RESPONSES TO
WASHINGTON'S THIRD
DISCOVERY REQUESTS

15 TO: STATE OF WASHINGTON, Defendant
16 AND TO: FRONDA WOODS, Attorney of Record for Defendant
17 AND TO: STEVE E. DIETRICH, Attorney of Record for Defendant
18 AND TO: PHILIP M. FERESTER, Attorney of Record for Defendant

19
20 COME NOW, the Plaintiff-Intervenor Tribes, and answer and respond to Defendant
21 State of Washington's Third discovery requests pursuant to Fed. R. Civ. P. 26, 29, 33 and 34,
22 the corresponding Local Civil Rules for the United States District Court – Western District of
23 Washington ("LCR"), and the proposed Scheduling Order for this subproceeding.
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26 C70-9213, Subproceeding 01-1 (Culverts)

PLAINTIFF-INTERVENOR TRIBES' ANSWERS AND
RESPONSES TO WASHINGTON'S THIRD DISCOVERY
REQUESTS – PAGE 1

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1 obtain fish for ceremonial and subsistence needs, including the opportunity to obtain fish for
2 these purposes from traditional sources or through traditional methods.

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5 INTERROGATORY NO. 108: If your answer to Interrogatory No. 107 is yes, please
6 identify the culvert or culvert, Tribe or Tribe, and ceremonial or subsistence fishery involved,
7 and please explain why you believe the culvert or culverts to be state-owned.

8 ANSWER: N/A.

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11 INTERROGATORY NO. 109: Do you have any evidence of actual fish killed at or
12 as a result of a state-owned culvert? If the answer is yes, please identify the exact location of
13 the fish kill, including stream, WRIA number, and river mile. Please explain why you
14 believe the culvert to be a state-owned culvert.

15

16 ANSWER:

17

18 NWIFC:

19

20 SKAGIT RIVER SYSTEM COOPERATIVE: Yes we have evidence of fish kill.
21 Red Cabin Creek at Highway 20, Tributary to the Skagit River in WRIA 3, river mile
22 unknown, near the town of Hamilton. We believe the culvert is state owned because it is under
23 State Highway 20.

24

25 POINT NO POINT TREATY COUNCIL: No.

26

LUMMI:

C70-9213, Subproceeding 01-1 (Culverts)

1 PUYALLUP: No, not in the sense of physical evidence, post-mortem or necropsy
2 documents, "smoking gun" photos, etc.
3

4 SWINOMISH: No additional information beyond that supplied by the Skagit River
5 System Cooperative (formerly Skagit System Cooperative) in its responses to this
6 Interrogatory.

7 UPPER SKAGIT:

8 SUQUAMISH: Yes. SR 305 just SW of Johnson Road crossing, WRIA 150290
9 (Bjorgen creek) RM 0.4 has been the scene of fish killed at a State-owned culvert. Dead
10 chum and coho salmon have been observed at the downstream end of this culvert during
11 annual spawner ground survey work conducted by Suquamish Fisheries staff.
12

13 STILLAGUAMISH:
14

15 NISQUALLY: No.

16 PORT GAMBLE S'KLALLAM: Yes. As a result of stream channel drying and
17 isolation of juvenile coho from upstream perennial habitat in Marple Creek by a State-owned
18 culvert, there has been direct mortality of salmon. Please see the answer to Interrogatory No.
19 82. Marple Creek lies in WRIA 17, and the State Highway 101 crossing lies at
20 approximately RM 0.2. This event occurs each year that the stream dries below Highway
21 101. Often, when stream drying is not complete, piscivorous birds and raccoons will easily
22 prey on juvenile coho isolated in individual pools by stream drying.
23

24 JAMESTOWN S'KLALLAM: No.
25

26 C70-9213, Subproceeding 01-1 (Culverts)

1 LOWER ELWHA KLALLAM: Culverts do not generally result in fish kills, rather
2 they limit the ability of fish to complete their life histories and may result in reductions in fish
3 production within certain watersheds. The Brownes Creek culvert failure discussed in
4 Interrogatory number 83 is an example of a catastrophic culvert failure.

5 SAUK-SUITTLE: No additional information beyond that provided by Skagit
6 River System Cooperative.

8 NOOKSACK:

10 HOH: No state owned culverts have been assessed by the state or Hoh Tribe as
11 being the direct cause of debris flows killing fish or incubating eggs nor had we witnessed
12 fish mortalities at the Lost Creek culvert perched outfall.

13 MAKAH: See # 82 above.

15 SQUAXIN ISLAND:

16 SKOKOMISH:

17 QUINAULT:

18 YAKAMA:

21 INTERROGATORY NO. 110: For each of the plaintiff-intervenor Tribes, please
22 state, for each year from 1995 forward, the Tribal government's total dollar expenditures,
23 including expenditures for business enterprises owned by the Tribe.

24 ANSWER: Objection. This Interrogatory is not reasonably calculated to discover
25 relevant evidence and is vague, ambiguous, and overbroad. Many Tribal governmental
26 C70-9213, Subproceeding 01-1 (Culverts)

1 ANSWERS AND RESPONSES dated this 27th day of May, 2005.

2 RAAS, JOHNSEN & STUEN, P.S. KANJI & KATZEN, PLLC
3 OFFICE OF SPECIAL COUNSEL

4

5 DANIEL A. RAAS, WSBA #4970
6 Counsel for the Lummi Indian Tribe
7 Tribal Coordinating Counsel

8 PHILLIP E. KATZEN, WSBA #7835
9 Co-Counsel for the Suquamish, Jamestown,
10 Lower Elwha, Pt. Gamble Bands of S'Klallams,
11 Nisqually, Nooksack, Sauk-Suiattle, Skokomish,
12 Squaxin Island, Stillaguamish, and Upper Skagit
13 Tribes
14 Tribal Coordinating Counsel

15

16 MORISSET SCHLOSSER AYER et al.

17

18 MASON D. MORISSET, WSBA #273
19 Counsel for the Tulalip Tribe
20 Tribal Coordinating Counsel

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VERIFICATION

The undersigned, as Tribal Coordinating Counsel, and attorney for Plaintiff Tribe, Lummi Indian Nation, certifies to the best of his knowledge, information and belief, formed after a reasonable inquiry that the responses and objections are: (1) consistent with the Federal Rules of Civil Procedure and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation.

DATED this 27th day of May, 2005.

KANJI & KATZEN, PLLC

PHILLIP E. KATZEN, WSBA #7835

C70-9213, Subproceeding 01-1 (Culverts)

TRIBES' THIRD INTERROGATORIES, REQUESTS FOR
PRODUCTION, AND REQUESTS FOR ADMISSIONS
PROPOUNDED TO DEFENDANT – PAGE 118

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4 Stillagaumish, and Upper Skagit Tribes
5 Tribal Coordinating Counsel
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6-14-05

MUCKLESHOOT TRIBAL SPECIFIC ANSWERS TO THIRD SET OF INTERROGATORIES

The Muckleshoot Tribe joined with other Intervenor tribes in the answers to most of the State's Third set of Interrogatories and the Request for Admissions. What is set out below are the answers to the tribal specific questions.

1. Interrogatory 105: Tribal enrollment is 1923
2. Interrogatory 109: Object. The interrogatory has not time or geographic boundary included. As a result it is not possible to determine the exact scope of the information requested. Without waiving the objection set out herein, the Muckleshoot Tribe is not aware of any documented fish kills as a result of culverts in addition to those identified in state records and publications.
3. Interrogatory 111. Object. It is not possible to answer this question. Tribal budgets are not itemized with such specificity. Actions to address culverts would not appear as specific line items. It would be burdensome to attempt to examine every Fishery and Public Works (the departments most likely involved with culverts) budget item to see if any of a particular funding source was used Tribal actions related to culverts. Without waiving the above set out objection, the Tribe is not aware of any funding requests specifically requesting funds to address culverts.
4. Interrogatory 115 In the day to day review of state and other projects that could affect fishery resources and in the carrying out of the Tribe's co-management duties, Tribal Fishery staff commonly encounter projects with culvert components. Those current Tribal staff most likely to encounter projects that include culvert issues are: Karen Walter, Martin Fox, Andy Dalton, Carla Carlson, Patrick Reynolds, and Joseph Martin.
5. Interrogatory 119 The Tribe does not have a "scientific or engineering research" program per se and is not involved in pure research.
6. Interrogatory 126 Object. The question has no time frame and as a result its answer would be overly burdensome. Without waiving the objection set out herein, the Tribe has on occasion testified before legislative committees related to fishery matters, where those matters could have included culverts. The Tribe does not maintain records of such actions.
7. Interrogatory 127 N/A
8. Interrogatory 132 Object. The question is boundless and would be impossible to answer